IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8189 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BECHARBHAI C SOLANKI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/03/2000

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. The brief facts of the present writ petition are as under :-

3. The respondent-workman was serving as a Conductor

with the petitioner-Gujarat State Road Transport Corporation [hereinafter referred to as, `the Corporation']. On 21st May, 1994, the respondent-workman was on duty on Ahmedabad-Busawal route. It is alleged that instead of depositing the amount of collection of the fare amount of Rs. 13,043.75p. on the same day, he deposited the same on 26th May, 1994. Similarly, the block of Rs. 48/= valued at Rs. 2,304 was deposited only on 1st June, 1994. In this manner, instead of deposing an amount of Rs. 4788/= on 11-1-1995, he deposited Rs. 4,000/= on 16.1.1995 through some of his relative, thereby depositing Rs. 748/= less. On these allegations, the respondent-workman was given chargesheet and subsequently, departmental inquiry was held against him. After completion of the departmental inquiry, the respondent-workman was dismissed from service on 8th October, 1996. Aggrieved by the said order of dismissal, the respondent-workman approached the Labour Court by raising an industrial dispute. The said industrial dispute was referred for adjudication to the Labour Court, Ahmedabad being Reference [LCA] No. 1196 of 1997. Before the Labour Court, the statement of claim was filed by the respondent and written statement was filed by the petitioner. One fact remains that the respondent-workman has completed more than 28 years service as a Conductor in the Corporation. Before the Labour Court, documentary evidence was produced by the petitioner-Corporation and the respondent workman was examined vide Exh. 12 and on behalf of the petitioner, one one was examined by the Labour Court. Before the Labour Court, the respondent workman has given an application under Section-11A of the Industrial Disputes Act, 1947 [hereinafter referred to as, `the ID Act'] and pointed out that he was working as a Conductor since more than 28 years and he was dismissed from service on 8th October, 1996. The respondent workman also submitted that in the said application though the legality and validity of the departmental inquiry has not been challenged by him but finding of the Inquiry Officer has been challenged and also requested the Labour Court to consider the question of disproportionate punishment looking to the gravity of the misconduct and past service of the respondent-workman. The Labour Court, thereafter considered the merits of the matters and come to the conclusion that the allegations levelled against the respondent-workman has been found to be proved but the charge of misappropriation was not found to be proved, and therefore, the Labour Court come to the conclusion that the misconduct of negligence was found to be proved. Accordingly, considering the past record of 24 defaults of the respondent-workman, the Labour Court vide Award dated 26th February, 1999, has

granted reinstatement with continuity in service with 50% of the backwages for the interim period. The said Award is under challenge in the present petition.

4. Learned advocate Mr. Rawal has submitted that the respondent-workman had recovered the amount from the passengers and pocketed the said with him and the said amount was lying with him for a number of days and it came to be deposited subsequently. The delay to deposit the collection of the fare-amount with the Corporation is itself a temporary misappropriation and there is no question of negligence because it is the duty of the Conductor to deposit the amount of fare collection immediately with the Corporation or after completion of the working hours. Therefore, in the present case, admittedly, the respondent workman had collected the amount from the passengers and pocketed the same and went to his home and after number of days such amount was lying with the respondent-workman which amounts to clear charge of misappropriation, and therefore, the findings of the Labour Court is perverse and apparently erroneous, therefore, this award is required to be set-aside.

5. Learned advocate Mr. Joshi appearing for the respondent-workman submitted that the respondent-workman has belatedly deposited the fare-amount because of some compelling circumstances as he had fallen ill all of a sudden and therefore, there was no intention of the workman to misappropriate the same. Mr. Joshi has drawn attention of this Court at page 77 and 78 of the record produced and pointed out that during this period Diwali rush was there and due to compelling circumstances only, the respondent-workman was not able to deposit the said amount immediately and this negligence on the part of the respondent-workman cannot be considered to be misappropriation, and therefore, the findings recorded by the Labour Court with regard to this negligence is correct, and there is no perverse or baseless finding given by the Labour Court.

6. I have considered the submissions of both the learned advocates. After reading the entire award, it appears that though the respondent-workman had collected the fare from the passengers but he had not deposited the same immediately with the Cashier of the Corporation after completion of his duty hours. Keeping the amount with him for number of days and depositing the same subsequently amounts to clear temporary misappropriation committed by the respondent-workman, however, the respondent workman has given explanation for committing such a misconduct that this happened because he had

fallen hill all of a sudden on the relevant dates after completion of his duty. Subsequently, the Corporation has accepted the amount from him and there was no such document which proves the fact that the respondent workman has committed such a serious misconduct with a malafide intention. Therefore, considering the explanation given by the respondent workman that the date on which the said incident occurred, on that day there was theft committed by someone and in the said theft, the Tray and tickets were stolen by somebody, and thereafter, he had fallen ill all of a sudden and therefore, he was not to deposit the said amount in time. After considering this explanation, facts of the present case and the observations made by the Labour Court, I am of the view that while confirming the order of reinstatement of the respondent workman, if the amount of 50% of the backwages granted by the Labour Court is set-aside by way of some punishment for committing misconduct, then it would meet the ends of justice. In view of these observations and discussion, as aforesaid, as the respondent workman having more than 28 years service in his credit, considering his explanation that on the date of incident, from his Ticket Tray, some tickets from stolen by someone and thereafter he had fallen sick and subsequently, immediately he deposited the said amount in the Corporation and the Corporation has accepted the same amount and also considering the past record of the respondent workman wherein 24 defaults are found to have been committed, I am of the view that if only reinstatement is granted with continuity of service to the respondent workman and to quash and setaside the directions in respect of the granting of 50% of the backwages for the interim period by the Labour Court and also imposing the penalty of stoppage of three increments with permanent effect, it will meet the ends of justice. The said order is passed by me on the basis of the fact that both the learned advocate appearing for the respective parties have left the decision to the discretion of this Court, as if this Court may exercise similar powers under Section 11-A of the I.D Act. On the joint request being made by both the learned advocates, I am passing the following order :-

The Award passed by the Labour Court dated 26th February, 1999 in Reference (LCA) No. 1196 of 1997 is setaside in respect of granting of 50% of the backwages for the interim period. The Award of the Labour Court in respect of the reinstatement of the respondent workman with continuity of service is confirmed. I also impose the punishment of stoppage of three increments with permanent effect.

Accordingly, the said award dated 26th February, 1999 stands modified to the aforesaid extent. Petition is partly allowed.

In the present case, Rule was issued and ad-interim order has been passed on 20th October, 1999 and thereafter, the ad-interim relief was confirmed on 15th December, 1999. Therefore, naturally the said award has not been implemented by the petitioner-Corporation so far. The workman is out of job since 8th October, 1999, therefore, I am directing the petitioner Corporation to reinstate the respondent workman within a period of one month from today and also direct the petitioner Corporation to pay full wages to the respondent workman from 26th February, 1999 till the date of his reinstatement in service within a period of two months from today. Rule is made absolute to that extent. Ad-interim relief which has been granted earlier stands vacated. No order as to costs.

[H.K Rathod, J.]

Prakash*